



RIN 3064–ZA20

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: On May 17, 2022, the Federal Deposit Insurance Corporation (FDIC) adopted revised Guidelines for Appeals of Material Supervisory Determinations. The revisions generally restore the Supervision Appeals Review Committee as the final level of review in the supervisory appeals process, consistent with the agency’s longstanding practice of providing Board-level review of material supervisory determinations.

DATES: The revised Guidelines for Appeals of Material Supervisory Determinations took effect on May 17, 2022. Written comments must be received by the FDIC on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] for consideration.

ADDRESSES: Interested parties are invited to submit written comments, identified by RIN 3064-ZA20, by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments.
- *Email:* comments@FDIC.gov. Include “Guidelines for Appeals of Material Supervisory Determinations – RIN 3064-ZA20” in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments – RIN 3064-ZA20, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m. (EST).

- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to

<https://www.fdic.gov/resources/regulations/federal-register-publications/>.

Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Patricia Colohan, Associate Director, Division of Risk Management Supervision, pcolohan@fdic.gov, 202-898-7283; Tara Oxley, Associate Director, Division of Depositor and Consumer Protection, toxley@fdic.gov, 202-898-6722; James Watts, Counsel, Legal Division, jwatts@fdic.gov, 202-898-6678.

SUPPLEMENTARY INFORMATION:

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 required the FDIC (as well as the other Federal banking

agencies and the National Credit Union Administration) to establish an “independent intra-agency appellate process” to review material supervisory determinations.¹ The statute defines the term “independent appellate process” to mean “a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.”² In the appeals process, the FDIC is required to ensure that: (1) an IDI’s appeal of a material supervisory determination is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.³

In 1995, the FDIC adopted Guidelines for Appeals of Material Supervisory Determinations to implement section 309(a). At that time, the FDIC’s Board of Directors established the Supervision Appeals Review Committee (SARC) to consider and decide appeals of material supervisory determinations.⁴ The Board has modified the composition of the SARC over the years, but as of 2021, the SARC included: one inside member of the FDIC’s Board of Directors (serving as Chairperson); one deputy or special assistant to each of the other inside Board members; and the General Counsel as a non-voting member.

In January 2021, the FDIC adopted Guidelines that generally replaced the SARC as the final level of review in appellate process with a standalone office within the FDIC, designated the Office of Supervisory Appeals (Office).⁵ This Office was granted delegated authority to consider and resolve appeals of material supervisory determinations, and would be staffed by reviewing officials with bank supervisory or examination experience. After appealing a material supervisory determination to the relevant Division Director, an institution would have the option to appeal to the Office.

¹ 12 U.S.C. 4806(a).

² 12 U.S.C. 4806(f)(2).

³ 12 U.S.C. 4806(b).

⁴ 60 FR 15923 (Mar. 28, 1995).

⁵ 86 FR 6880 (Jan. 25, 2021).

If a material supervisory determination was appealed to the Office, a three- or five-member panel of reviewing officials would consider the appeal and issue a written decision to the institution. The Guidelines did not provide for additional review beyond the Office.

Restoring Committee Structure

Prior to the establishment of the Office, the FDIC's supervisory appeals process had always provided for Board-level review by including a Board member on the SARC. The FDIC's experience suggests that its longstanding practice of providing Board-level review of material supervisory determinations would better promote independence and accountability in the appellate process. Allowing material supervisory determinations to be appealed to a Board-level committee underscores the significance of an independent review and lends credibility to the process. Furthermore, Board-level review has historically ensured that accountability for the FDIC's supervisory determinations ultimately remains with the agency's Board of Directors, consistent with sound corporate governance principles.

The FDIC also believes that restoring the SARC as the final level of review for supervisory appeals will address staffing concerns that were inherent in the Office structure and may potentially threaten to hinder the effectiveness of the process going forward. The Guidelines provided that the Office would be staffed with reviewing officials hired for terms, and current government officials were ineligible to serve as reviewing officials. The FDIC also noted that it expected to employ reviewing officials on a part-time, intermittent basis.⁶ Given these constraints, experience suggests that it may be challenging to recruit and retain individuals with sufficient expertise and judgment to make final supervisory decisions on behalf of the agency. Inability to

⁶ 85 FR 54377, 54378 (Sep. 1, 2020).

adequately staff the Office on an ongoing basis would prevent the agency from satisfying its statutory mandate to expeditiously hear and decide appeals of material supervisory determinations. By contrast, vacancies on the SARC can be filled more promptly through existing routine internal processes, minimizing potential impact on the administration of appeals. Reliance on existing staff rather than employees dedicated solely to the appeals function (even on a part-time basis) is also a more cost-effective use of the Deposit Insurance Fund, given the historically infrequent nature of supervisory appeals.⁷

For these reasons, the FDIC has reconstituted the SARC and adopted revised Guidelines that restore the SARC as the final level of review of material supervisory determinations made by the FDIC.⁸ Consistent with the composition of the SARC as it stood in 2021, the SARC will include: one inside member of the FDIC's Board of Directors (serving as Chairperson); a deputy or special assistant to each of the other inside Board members; and the General Counsel as a non-voting member. Also consistent with the prior structure of the SARC, the Chairperson of the FDIC's Board of Directors will have the authority to designate alternate members in the event of vacancies.

The revised Guidelines also include changes to certain procedural provisions that are intended to reflect the restoration of the SARC structure in the appeals process. For example, the SARC Chairperson will have the authority to extend the timeframes where supervisory appeal rights are suspended while a formal enforcement action is being pursued, and to approve an institution's submission of evidence that was not previously submitted to the Division Director for review. The SARC Chairperson also may provide

⁷ In the fifteen years prior to the establishment of the Office, 51 appeals were submitted to the SARC out of 113,448 examinations. Some of these appeals were withdrawn prior to a decision, raised issues that were not reviewable under the Guidelines, or became moot because the institution had failed.

⁸ While the FDIC has periodically amended the Guidelines through the notice and comment process that generally applies to rulemakings, soliciting comment is not required.

guidance to Division Directors in response to procedural questions relating to appeals.

These authorities are consistent with the SARC Chairperson's authorities under the Guidelines that were in effect until December 2021.

Communications with Supervisory Staff

The revised Guidelines also eliminate a provision that was added in 2021 specifically to accommodate an independent Office of Supervisory Appeals. This provision required that any communications between the Office and supervisory staff be in writing and shared with an appealing bank. As a conforming change, and given the broad responsibilities that SARC members have in their normal duties, the FDIC believes that a provision limiting communications with supervisory staff is no longer appropriate.

Formal Enforcement-Related Decisions

In the revised Guidelines, the FDIC is retaining the provisions for considering formal enforcement-related decisions (and their underlying facts and circumstances) that were adopted in 2021 to clarify the intersection of the supervisory appeals process and the administrative enforcement process. The revised Guidelines include one enhancement to these provisions. Specifically, the Guidelines previously stated that if the FDIC provided written notice to an institution that it is determining whether a formal enforcement action is merited, the FDIC would have 120 days from the date of the notice to issue an Order of Investigation, a Notice of Charges, or to provide the institution with a draft consent order; if the FDIC failed to do so, supervisory appeal rights would be made available under the Guidelines. In some instances, however, when the FDIC provides notice that it is determining whether a formal enforcement action is merited, it invites the institution to provide additional information. This can serve as an important channel of communication between institutions and supervisory staff, but the timeframes contained in the Guidelines did not account for the possibility of an institution providing

information in response to the FDIC's notice. The FDIC believes that the process should provide ample opportunity to review information provided by the institution before taking enforcement action. Accordingly, the revised Guidelines provide that the FDIC has 120 days to take action from the date of its notice to the institution or the date of the most recent submission of information from the institution, whichever is later.

Other Aspects of the Appeals Process

Aside from the substitution of the SARC for the Office as the final level of review, most aspects of the supervisory appeals process remain unchanged. The revised Guidelines continue to encourage institutions to make good-faith efforts to resolve disputes with the on-site examiner and/or the appropriate Regional Office. While such efforts are not required under the process, the FDIC's experience suggests that they may narrow the matters in dispute or eliminate the need for an appeal in some instances.

The revised Guidelines also continue to provide for review by the appropriate Division Director before an appeal to the SARC may be submitted. The Division Director will have 45 days to consider the appeal and issue a written decision on the supervisory matters at issue.

In addition, the revised Guidelines continue to include provisions for considering formal enforcement-related decisions (and their underlying facts and circumstances) that were adopted in 2021 to clarify the intersection of the supervisory appeals process and the administrative enforcement process. These provisions were intended to allow sufficient time to review the facts and circumstances that lead to formal enforcement actions and ensure that such actions were not brought prematurely, and to allow sufficient time for institutions to consider and execute consent orders.⁹ The FDIC believes these clarifying provisions have been beneficial and should be retained.

⁹ See 85 FR 54377, 54380 (Sep. 1, 2020).

Effective Date

These revised Guidelines took effect on May 17, 2022. The FDIC believes that taking action quickly in this instance minimizes the potential for confusion among insured depository institutions with respect to the process they must follow in the event they wish to appeal a material supervisory determination.

Request for Comment

The FDIC invites comment on all aspects of the revised Guidelines. In particular, the FDIC is considering how it may further enhance the supervisory appeals process to include the Ombudsman's perspective. When the FDIC amended the Guidelines in 2021, it formalized its process for including the Ombudsman's views in the consideration of appeals. Specifically, copies of appeals to the Office were also provided to the Ombudsman, and the Ombudsman could submit views to the panel for consideration. The revised Guidelines retain this process, allowing the Ombudsman to submit views regarding an appeal to the SARC. Are there other enhancements to the process the FDIC should consider to include the Ombudsman's perspective, while remaining consistent with the Ombudsman's role as a neutral liaison between supervised institutions and the FDIC?

For the reasons set out in the preamble, the Federal Deposit Insurance Corporation adopts the Guidelines for Appeals of Material Supervisory Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) (Riegle Act) required the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency

appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (Guidelines) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (SARC).

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC:

(1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible to Appeal

The Guidelines apply to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks, insured branches of foreign banks, and state savings associations), and to other insured depository institutions for which the FDIC makes material supervisory determinations.

D. Determinations Subject to Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines.

- (1) Material supervisory determinations include:
 - (a) CAMELS ratings under the Uniform Financial Institutions Rating System;
 - (b) IT ratings under the Uniform Rating System for Information Technology;
 - (c) Trust ratings under the Uniform Interagency Trust Rating System;
 - (d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;
 - (e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;
 - (f) Registered transfer agent examination ratings;
 - (g) Government securities dealer examination ratings;
 - (h) Municipal securities dealer examination ratings;
 - (i) Determinations relating to the appropriateness of loan loss reserve provisions;
 - (j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;
 - (k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;
 - (l) Truth in Lending Act (Regulation Z) restitution;

- (m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829 (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (DCP) or the Division of Risk Management Supervision (RMS);
 - (n) Decisions to initiate informal enforcement actions (such as memoranda of understanding);
 - (o) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires an additional formal enforcement action, the proposed new enforcement action is not appealable;
 - (p) Matters requiring board attention; and
 - (q) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or that otherwise affects the nature and level of supervisory oversight accorded an institution.
- (2) Material supervisory determinations do not include:
- (a) Decisions to appoint a conservator or receiver for an insured depository institution, and other decisions made in furtherance of

the resolution or receivership process, including but not limited to determinations pursuant to parts 370, 371, and 381, and section 360.10 of the FDIC's rules and regulations;

- (b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831o;
- (c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and
- (d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

(3) A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) (Order of Investigation), issues a notice of charges or a notice of assessment under 12 U.S.C. 1818 or other applicable laws (Notice of Charges), provides the institution with a draft consent order, or otherwise provides written notice to the institution that the FDIC is reviewing the facts and circumstances presented to determine if a formal enforcement action is merited under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (ECOA) or a notice to the Secretary of Housing and Urban Development (HUD) for violations of ECOA or the Fair Housing Act (FHA). Such notice may be provided in the transmittal letter accompanying a Report of Examination. For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice that the FDIC is reviewing the facts and circumstances presented to determine if a proposed enforcement action is merited. Commencement of a formal

enforcement-related action or decision will not suspend or otherwise affect a pending request for review or appeal that was submitted before the commencement of the formal enforcement-related action or decision.

(4) Additional Appeal Rights:

- (a) In the case of any written notice from the FDIC to the institution that the FDIC is determining whether a formal enforcement action is merited, the FDIC must issue an Order of Investigation, issue a Notice of Charges, or provide the institution with a draft consent order within 120 days of such a notice, or the most recent submission of information from the institution, whichever is later, or appeal rights will be made available pursuant to these Guidelines. If the FDIC timely provides the institution with a draft consent order and the institution rejects the draft consent order in writing, the FDIC must issue an Order of Investigation or a Notice of Charges within 90 days from the date on which the institution rejects the draft consent order in writing or appeal rights will be made available pursuant to these Guidelines. The FDIC may extend these periods, with the approval of the SARC Chairperson, after the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.
- (b) In the case of a referral to the Attorney General for violations of the ECOA, beginning on the date the referral is returned to the FDIC, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.
- (c) In the case of providing notice to HUD for violations of the ECOA or the FHA, beginning on the date the notice is provided, the FDIC must proceed in

accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(d) Written notification will be provided to the institution within 10 days of a determination that appeal rights have been made available under this section.

(e) The relevant FDIC Division and the institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP, RMS, or the Division of Complex Institution Supervision and Resolution (CISR), or to filing a subsequent appeal with the SARC under these Guidelines.

F. Filing a Request for Review with the Appropriate Division

(1) An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, the Director, RMS, or the Director, CISR (Director or Division Director), 550 17th Street, NW, Room F-4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. Requests for review also may be submitted electronically. To ensure confidentiality, requests should be submitted through *securemail.fdic.gov*, directing the message to

DirectorReviewRequest@fdic.gov. A request for review must be in writing and must include:

- (a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and
- (b) A statement that the institution's board of directors or senior management has considered the merits of the request and has authorized that it be filed. Senior management is defined as the core group of individuals directly accountable to the board of directors for the sound and prudent day-to-day management of the institution. If an institution's senior management files an appeal, it must inform the board of directors of the substance of the appeal before filing and keep the board of directors informed of the appeal's status.

(2) Within 45 calendar days after receiving a request for review described in paragraph (1), the Division Director will:

- (a) review the appeal, considering whether the material supervisory determination is consistent with applicable laws, regulations, and policy, make his or her own supervisory determination without deferring to the judgments of either party, and issue a written determination on the request for review, setting forth the grounds for that determination; or

(b) refer the request for review to the SARC for consideration as an appeal under Section G and provide written notice to the institution that the request for review has been referred to the SARC.

(3) No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

(4) In any decision issued pursuant to paragraph (2)(a) of this section, the Director will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file.

(5) The Division Director may request guidance from the SARC Chairperson or the Legal Division as to procedural or other questions relating to any request for review.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director may appeal that determination to the SARC within 30 calendar days after the date of receipt of that determination. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC.

1. Filing with the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days after the date of receipt of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. The appeal should be sent to the address indicated on the Division Director's determination being appealed, or sent via e-mail to *ESS_Appeals@fdic.gov*. An acknowledgment of the appeal will be provided to the institution, and copies of the institution's appeal will be provided to the Office of the Ombudsman and the appropriate Division Director.

2. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. If expedited review is requested, the appeal should state the reason for the request. Only matters submitted to the appropriate Division Director in a request for review may be appealed to the SARC. Evidence not presented for review to the Division Director is generally not permitted; such evidence may be submitted to the SARC only if approved by the SARC Chairperson and with a reasonable time for the Division Director to review and respond. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

3. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

4. Submissions from the Ombudsman and the Division Director

The Ombudsman and the Division Director each may submit views regarding the appeal to the SARC within 30 calendar days of the date on which the appeal is received by the SARC.

5. Oral Presentation

The SARC will, if a request is made by the institution or by FDIC staff, allow an oral presentation. The SARC may hear oral presentations in person, telephonically, electronically, or through other means agreed upon by the parties. If an oral presentation

is held, the institution and FDIC staff will be allowed to present their positions on the issues raised in the appeal and to respond to any questions from the SARC.

6. *Consolidation, Dismissal, and Rejection*

Appeals based upon similar facts and circumstances may be consolidated for expediency. An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. The SARC will decline to consider an appeal if the institution's right to appeal is not yet available under Section D(4), above.

7. *Scope of Review and Decision*

The SARC will be an appellate body and will make independent supervisory determinations. The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC's review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC will not consider any aspect of an appeal that seeks to change or modify existing FDIC rules or policy. The SARC, after consultation with the Legal Division, will refer any appeals that raise policy matters of first impression to the Chairperson's Office for its consideration. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days after the date the SARC meets to consider the appeal, which meeting will be held within 90 days after either the date of the filing of the appeal or the date that the Division Director refers the appeal to the SARC.

H. Publication of Decisions

Decisions of the SARC will be published as soon as practicable, and the published decisions will be redacted to avoid disclosure of the name of the appealing institution and any information exempt from disclosure under the Freedom of Information Act and the FDIC's document disclosure regulations found in 12 CFR part 309. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC. Annual reports on the SARC's decisions and Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

I. Appeal Guidelines Generally

Appeals to the SARC will be governed by these Guidelines. The SARC, with the concurrence of the Legal Division, will retain discretion to waive any provision of the Guidelines for good cause. Supplemental rules governing the SARC's operations may be adopted.

Institutions may request extensions of the time period for submitting appeals under these Guidelines from either the appropriate Division Director or the SARC Chairperson, as appropriate. If a filing under these Guidelines is due on a Saturday, Sunday, or a Federal holiday, the filing may be made on the next business day.

J. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed, or a final SARC decision issued, is not eligible for consideration by the Ombudsman. However, pursuant to Section (G)(4) of these Guidelines, the Ombudsman may submit views to the SARC for its consideration in connection with any pending appeal.

K. Coordination with State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, the Director, RMS, or the Director, CISR, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State regulatory authority will be left to those parties to resolve.

L. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress during the appeal or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

M. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

N. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or

retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Suite E-2022, Arlington, Virginia, 22226, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 17, 2022.

James P. Sheesley,

Assistant Executive Secretary.

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